

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of:

Confirmation No.: 8653

Del Soldato *et al.*

Group Art Unit: Unknown

Application Serial No.: 10/516,938

Examiner: Unassigned

Filed: June 20, 2003

Attorney Docket No.: 026220-00058

For: Nitrooxyderivatives of Cyclooxygenase-2 Inhibitors

September 13, 2005

PETITION UNDER 37 C.F.R. §1.47(a)

Mail Stop PETITIONS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to 37 C.F.R. §1.47(a), the applicants respectfully petition the U.S. Patent and Trademark Office to accept the Oath/Declaration submitted herewith containing the signature of inventor Giancarlo SANTUS. The signature of Piero DEL SOLDATO is missing as he refuses to join the application (Piero DEL SOLDATO is a non-signing inventor). Pursuant to 37 C.F.R. §1.47(a) and M.P.E.P. §409.03, the applicants include:

- 1) an affidavit by Italian attorney Maria Teresa Noro indicating that she sent the entire application (specification, claims, and drawings) along with a declaration to inventor Del Soldato, and his counsel Mr. Fabrizio Conte (the stamp and signature at the bottom of the duplicate copy of the letter indicate that Mr. Fabrizio Conte received both letters), twice requesting his signature on the declaration. On neither occasion did inventor Del Soldato return the signed declaration nor did he ever indicate that he was willing to participate in this application. Indeed, inventor Del Soldato's conduct clearly indicates that he does not intend to join this application;

- 2) letters sent by Attorney Teresa Noro with English translations thereof;
- 3) copies of postal receipts; and
- 4) Affidavit of Accuracy of translation

The applicants also include the Notification of Missing Requirements mailed May 23, 2005, and a check for \$420.00. The check includes \$130.00, the petition fee under 37 C.F.R. § 1.17(h); \$65.00, the surcharge for the late oath/declaration; and \$225.00, the fee for a two-month extension of time for a small entity.

The last known address of inventor Piero DEL SOLDATO is:

Via Enrico Toti 22
Monza, MI 20052
ITALY

The applicants respectfully submit that they have made a *bona fide* attempt to comply with the provisions of 37 C.F.R. § 1.47(a). The applicants respectfully request the Office of Petitions grant this petition and forward the file to the Office of Initial Patent Examination (OIPE) for further processing.

If any questions or issues remain, the Office of Petitions is respectfully requested to contact the undersigned to help with their resolution. The Commissioner is authorized to charge any additional fees required or credit any over-payments to Deposit Account No. 01-2300, referencing Attorney Docket No. 026220-00058.

Respectfully submitted,

ARENT FOX PLLC



Gautam Prakash, Ph.D.

Registration No.: 53,481

Direct Telephone No.: 202-857-6057

Customer No.: **004372**

1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5339

Telephone No.: 202-857-6000
Facsimile No.: 202-857-6395

/GP

Avv. Maria Teresa Noro

Spettabile
NicOx Research Institute S.r.l.
Giovanna Barchielli
Via Ariosto, 21
20091 - BRESSO
(Milano)

*20122 Milano
Via Freguglia, 4
Tel. 02.550.111.99
Fax 02.55.16.369*

Milan, June 22th, 2005

AFFIDAVIT

I, the undersigned Maria Teresa Noro, lawyer, practising in Milan, Via Freguglia 4, state the following.

I have been requested by Nicox to assist it in its controversy against Mr. Piero Del Soldato, a shareholder of the company Nicox S.A. and employee of Nicox S.r.l. who was dismissed by letter dated April 2, 2004.

On April 6, 2004, Mr. Piero Del Soldato challenged his dismissal and enforced his alleged right to be granted certain sums as compensation for his being assigned to less qualified duties, as well as the bonus under Articles 23 and following of Royal Decree no. 1127/39 (the Italian Patent Law) on account of the inventions of which he has been designated inventor or co-inventor during his employment relationship and which remains the sole property of N.S.A. For this reason, in the past few months I have been in touch on a frequent basis with Mr. Fabrizio Conte of the Milan Bar, the lawyer who is assisting Mr. Piero Del Soldato in the above mentioned controversy.

On April 1, 2005 Nicox S.A.'s Legal Department asked me to have the following documents signed by Mr. Piero Del Soldato and returned to it:

- 1) ns. rif. NP 0002 entitled "NITROOXYDERIVATIVES OF CYCLOOXYGENASE-2 INHIBITORS" - 5 documents: Canada/Assignment; New Zealand/Request under Section 23 (3); USA/Assignment and Declaration; South Africa/Assignment and a copy of the entire application (i.e. specification, including claims and drawings).
- 2) ns. rif. NP 0003 entitled "ORAL PHARMACEUTICAL FORMS OF LIQUID DRUGS HAVING IMPROVED BIOAVAILABILITY" - 5 documents: Canada/Assignment; New Zealand/Request under Section 23 (3); USA/Assignment and Declaration; South Africa/Assignment and a copy of the entire application (i.e. specification, including claims and drawings).

- 3) ns. rif. NP 0004 entitled "PROCESS FOR PREPARING NITROOXYALKYL SUBSTITUTED ESTERS OF CARBOXYLIC ACIDS, INTERMEDIATES USEFUL IN SAID PROCESS AND PREPARATION THEREOF" - 2 documents: USA/Assignment and Declaration and a copy of the entire application (i.e. specification, including claims and drawings).
- 4) ns. rif. NP 0011 entitled "PROCESS FOR PREPARING NITROOXYDERIVATIVES OF NAPROXEN" - 5 documents: Canada/Assignment; New Zealand/Request under Section 23 (3); USA/Assignment and Declaration; South Africa/Assignment and a copy of the entire application (i.e. specification, including claims and drawings).

On May 2, 2005 I sent a set of the above mentioned documents to Mr. Piero Del Soldato, at his domicile in Monza, Via Enrico Toti 22 under registered mail, with copy hand-delivered to his lawyer, asking Mr. Piero Del Soldato to return said documents to me duly signed or to notify in writing his explanations for not doing so.

On May 23, 2005 I sent another set of the above mentioned documents to Mr. Piero Del Soldato under registered mail, with copy to his lawyer, asking Mr. Piero Del Soldato to return said documents to me duly signed in ten days or to notify in writing his explanations for not doing so.

Mr. Piero Del Soldato never sent back to me these documents.

I enclose herewith copies of my letters dated May 2, 2005 together with the related registered mail receipt and acknowledgement of receipt; I also enclose the second one dated May 23, 2005 together with the related registered mail receipt and the printout obtained from the Poste Italiane (the Italian Post Office) website reporting the status of delivery.

A copy of my passport is also enclosed.

Respectfully submitted,


(Avv. Maria Teresa Noro)

Avv. Maria Teresa Noro

Egregio Signor
Dott. Piero del Soldato
Via Enrico Toti 22
20052 - M O N Z A

*20122 Milano
Via Freguglia, 4
Tel. 02.550.111.99
Fax 02.55.15.369*

e, per conoscenza
RACCOMANDATA A MANO
Egregio Signor
Avvocato Fabrizio Conte
Via Freguglia 8/a
20122 - M I L A N O

Milano, 2 maggio 2005
RACCOMANDATA A.R.

Egregio dott. Del Soldato,

Le invio la documentazione di cui in appresso trasmetterei alla Nicox, la quale mi ha incaricato di contattarla per richiederle di sottoscriverla.

Si tratta, specificamente, della seguente documentazione:

- 1) ns. rif. NP 0002 dal titolo "NITROOXYDERIVATIVES OF CYCLOOXYGENASE-2 INHIBITORS" - 5 documenti: Canada/Assignment; New Zealand/Request under Section 23 (3); USA/Assignment e Declaration; South Africa/Assignment e il testo del brevetto.
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Attendo che Lei mi restituisca detta documentazione debitamente firmata entro 15 giorni da oggi.

Trasmetto copia di questa lettera e dell'allegata documentazione anche al Suo legale, Avv. Fabrizio Conte, affinché ne possa prendere visione.

Coi migliori saluti.


(Avv. Maria Teresa Noro)

All.: come nel testo

Posteitaliane

Mod. 22 - R - Cod. 00150E - Ed. 10/01 (00) L1

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	CAP	22052		
	COMUNE	MONZA		PROV.
MITTENTE	MITTENTE	Avv. MARIA TERESA NORO		
	VIA / PIAZZA	Via Freguglia, 4 - 20122 MILANO		N° CIV.
	CAP	Tel. 02-550.111.99 (r.a.)		
	COMUNE	Fax 5516369		PROV.
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☐ Assicurata Euro _____

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Numero

Data di spedizione 2 MAGGIO 2005

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04 MAG. 2005

Ed. 0004 - LU

Piero Arca
Firma per esteso del ricevente
(Nome e Cognome)

Data

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- Sottoscrizione rifiutata

Avv. Maria Teresa Noro

Egregio Signor
Dott. Piero del Soldato
Via Enrico Toti 22
20052 - MONZA

20122 Milano
Via Freguglia, 4
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Fax 02.55.16.369

e, per conoscenza
RACCOMANDATA A MANO
Egregio Signor
Avvocato Fabrizio Conte
Via Freguglia 8/a
20122 - MILANO

Milano, 2 maggio 2005
RACCOMANDATA A.R.

Egregio dott. Del Soldato,

Le invio la documentazione di cui in appresso trasmessami dalla Nicox, la quale mi ha incaricato di contattarLa per richiederLe di sottoscriverla.

Si tratta, specificamente, della seguente documentazione:

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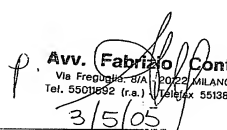
Attendo che Lei mi restituisca detta documentazione debitamente firmata entro 15 giorni da oggi.

Trasmetto copia di questa lettera e dell'allegata documentazione anche al Suo legale, Avv. Fabrizio Conte, affinché ne possa prendere visione.

Coi migliori saluti.


(Avv. Maria Teresa Noro)

All.: come nel testo


p. **Avv. Fabrizio Conte**
Via Freguglia, 8/a - 20122 MILANO
Tel. 5501692 (r.a.) - Telefax 5513884

3/5/05

Atty. Maria Teresa Noro

Attn.
Dr. Piero del Soldato
Via Enrico Toti 22
20052 - MONZA

20122 Milan
Via Freguglia, 4
Tel: 02.550.111.99
Fax: 02.55.16.369

and, for information

REGISTERED LETTER DELIVERED IN PERSON

Attn.
Atty. Fabrizio Conte
Via Freguglia 8/a
20122 - MILAN

Milan, May 2, 2005
REGISTERED LETTER A.R.

Dear Dr. Del Soldato,

I am sending you the documentation sent to me by Nicox S.A., which asked me to contact you and ask you to sign it.

Specifically, I am referring to the following documentation:

- 1) Our ref. NP 0002 titled "NITROOXYDERIVATIVES OF CYCLOOXYGENASE-2 INHIBITORS" - 5 documents: Canada/Assignment; New Zealand/Request under Section 23 (3); USA/Assignment and Declaration; South Africa/Assignment and the text of the patent.
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I am waiting for you to return said documentation to me, duly signed, within 15 days from today.

I am also sending a copy of this letter and its enclosed documentation to your lawyer, Atty. Fabrizio Conte, for his information.

Best regards.

[signature]
(Atty. Maria Teresa Noro)

Enclosures: as indicated in the text

Avv. Maria Teresa Noro

Egregio Signor
Dott. Piero Del Soldato
Via Enrico Toti 22
20052 - MONZA

*20122 Milano
Via Freguglia, 4
Tel. 02.550.111.99
Fax 02.55.16.369*

e, per conoscenza
RACCOMANDATA A MANO
Egregio Signor
Avvocato Fabrizio Conte
Via Freguglia 8/a
20122 - MILANO

Milano, 23 maggio 2005
RACCOMANDATA A.R.

Egregio dott. Del Soldato,

in nome e per conto della Nicox S.A., faccio seguito alla mia del 2 maggio scorso per inviarLe una seconda volta la documentazione seguente, che La prego di sottoscrivere e di restituire al mio Studio entro 10 giorni dal ricevimento della presente:

- 1) ns. rif. NP 0002 dal titolo "NITROOXYDERIVATIVES OF CYCLOOXYGENASE-2 INHIBITORS" - 5 documenti: Canada/Assignment; New Zealand/Request under Section 23 (3); USA/Assignment e Declaration; South Africa/Assignment e il testo del brevetto.
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Trasmetto copia di questa lettera anche al Suo legale, Avv. Fabrizio Conte, per sua informazione.

Rimango in attesa di Suo urgente riscontro e La saluto molto distintamente.


(Avv. Maria Teresa Noro)

All.: come nel testo

Posteitaliane

Mod. 22 - R - Cod. W8150E - Ed. 10/01 (00) L1

Accettazione **RACCOMANDATA**

RICEVUTA

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Aw. MARIA TERESA NORO				
Via Freguglia, 4 - 20122 MILANO				
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Fax 55163969				
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Avv. Maria Teresa Noro

Egregio Signor
Dott. Piero Del Soldato
Via Enrico Toti 22
20052 - MONZA

20122 Milano
Via Freguglia, 4
Tel. 02.550.111.99
Fax 02.55.16.369

e, per conoscenza
RACCOMANDATA A MANO
Egregio Signor
Avvocato Fabrizio Conte
Via Freguglia 8/a
20122 - MILANO

Milano, 23 maggio 2005
RACCOMANDATA A.R.

Egregio dott. Del Soldato,

in nome e per conto della Nicox S.A., faccio seguito alla mia del 2 maggio scorso per inviarLe una seconda volta la documentazione seguente, che La prego di sottoscrivere e di restituire al mio Studio entro 10 giorni dal ricevimento della presente:

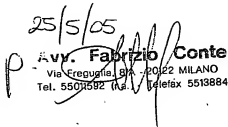
- 1) ns. rif. NP 0002 dal titolo "NITROOXYDERIVATIVES OF CYCLOOXYGENASE-2 INHIBITORS" - 5 documenti: Canada/Assignment; New Zealand/Request under Section 23 (3); USA/Assignment e Declaration; South Africa/Assignment e il testo del brevetto.
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Trasmetto copia di questa lettera anche al Suo legale, Avv. Fabrizio Conte, per sua informazione.

Rimango in attesa di Suo urgente riscontro e La saluto molto distintamente.


(Avv. Maria Teresa Noro)

All.: come nel testo

25/5/05

Avv. Fabrizio Conte
Via Freguglia, 8/a - 20122 MILANO
Tel. 5501592 (tel.) - Fax 5513884

Atty. Maria Teresa Noro

Attn.
Dr. Piero del Soldato
Via Enrico Toti 22
20052 - MONZA

20122 Milan
Via Freguglia, 4
Tel: 02.550.111.99
Fax: 02.55.16.369

and, for information
REGISTERED LETTER DELIVERED IN PERSON
Attn.

Atty. Fabrizio Conte
Via Freguglia 8/a
20122 - MILAN

Milan, May 23, 2005
REGISTERED LETTER A.R.

Dear Dr. Del Soldato,

In the name and on behalf of Nicox, S.A. I am following up on my letter of last May 2 in order to send you a second time the following documentation which I am asking you to sign and return to my Office within 10 days of receipt of this letter:

- 1) Our ref. NP 0002 titled "NITROXYDERIVATIVES OF CYCLOOXYGENASE-2 INHIBITORS" - 5 documents: Canada/Assignment; New Zealand/Request under Section 23 (3); USA/Assignment and Declaration; South Africa/Assignment and the text of the patent.
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I am also sending a copy of this letter to your lawyer, Atty. Fabrizio Conte, for his information.

I am waiting for your urgent answer and I remain

Sincerely,

[signature]
(Atty. Maria Teresa Noro)

Enclosures: as indicated in the text



TRANSPERFECT
TRANSLATIONS

AFFIDAVIT OF ACCURACY

I, Elizabeth Meyer, hereby certify that the following document is, to the best of my knowledge and belief, a true and accurate translation from Italian into English.

Elizabeth Meyer
TransPerfect Translations
601 Thirteenth Street, NW
Suite 320 North
Washington, DC 20005

Sworn to before me this
25th day of August, 2005

Signature, Notary Public

Lisa Sherfinski
Notary Public, District of Columbia
My Commission Expires 01-01-2008

Stamp, Notary Public
District of Columbia

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